



Iraqi commuters are kept at a safe distance as Soldiers and Marines work to dispose of an IED that was found along the shoulder of a busy highway in southern Iraq. (Master Sgt. Lek Mateo, Texas National Guard)



A Marine of the 15th Marine Expeditionary Unit assigned to Explosive Ordnance Team 8 prepares a Talon II remote-controlled robot to go down range and investigate a possible IED along the shoulder of a busy highway in southern Iraq. (Master Sgt. Lek Mateo)



'ON PATROL'



A cordless phone base used as a remote detonating device is recovered by a Marine Explosive Ordnance Team - 8 of the 15th Marine Expeditionary Unit who blew up the IED attached to it. (Master Sgt. Lek Mateo)



A thunderous blast signals the destruction of an IED made of two 122 mm artillery rounds hidden in a burlap bag and placed on the shoulder of a busy highway in southern Iraq. (Master Sgt. Lek Mateo)

DIVERSE NAVY - IRAQ EXPLOSIVE HAZARDS AWARENESS PROGRAM



Humvee damaged in attack (LCDR Bliss)



BASIC

A two hour awareness brief delivered in Kuwait under the auspices of the Victory Corps RSO&I program. The brief is compulsory for at least all US troops, and preferably Multi-National Force Iraq. The brief highlights the in-theatre explosive hazard threats, indicators of these threats and the fundamental TTPs to safeguard against these threats. The brief is very IED focused.

INTERMEDIATE

This training consists of a 5-8 hour C-IED package which is delivered by Unit Trainers to troops within their own unit/command. The Unit Trainers are students that have successfully completed the C-IED Train the Trainer course.

TRAIN THE TRAINER

A three day 'Train the Unit Trainer' course. Two-thirds of the course is counter-IED focused with the remaining time dedicated to landmine and UXO threats and all arms search. The training consists of a mix of theory lessons, practical lessons and teach-backs (or pitch-backs). A portion of the course is committed to Counter Radio Controlled Improvised Explosive Device Electronic Warfare (CREW) training and quick decision exercises (QDEs). Candidates for the course should be Soldiers and Marines:

- of any Military Occupational Specialty
- who 'go outside the wire' or fulfill responsibilities as CC or TCs
- above the rank of E5 (e.g. a US Army SGT)

The training consists of a mix of theory lessons, practical lessons and teach-backs

TRAIN THE TRAINER (MOD)

A tailored package designed to meet the needs of Major Subordinate Commands (MSCs) operations e.g. support to an operation or mission. The duration of this training is usually less than the three day Level III course. The course lessons are drawn from the three day course but it can have additional lessons added in to focus on specific needs (e.g. countering the threat posed by a certain IED that consistently appears in a BCTs TAOR).

A need was perceived to promote the existence of C-IED across all levels of command and liaise with MNC-I MSC HQs and LNOs to ascertain the nature and priority of their C-IED requirements. This was a problem for my predecessor but I have had no problem motivating the MSCs to request training. This is primarily down to targeting the right person at the right time. The need for good C-IED training has also been recognised by all senior leaders of the US military and has been given some recent momentum due to the increase in the use of IEDs and a memo from Commanding General CENTCOM General Abizaid. Since May 2003 there have been in excess of 38000 IED incidents. This figure only takes into A/C those IEDs that have detonated or have been found and cleared.

In addition to providing standard C-IED, we also provide training tailored to meet the specific requirements of MSCs e.g. mounted and dismounted patrols, danger area searches or general awareness briefs.

Source information from, and share information with key in-theatre agencies that are stakeholders in the C-IED fight or matters concerning explosive hazard threats. These organizations include (but are not limited to):

- MNC-I IED Working Group and IED Management Board

Roadside devices placed to train detection and recovery teams (LCDR Bliss)



- Joint IED Defeat Organisation
- Army Test and Evaluation Command (ATEC)
- TF Troy that includes:
 - Electronic Warfare Coordination Cell (EWCC)
 - Joint CREW Fielding Office
 - 3rd OD Bn (EOD)
 - Combined Explosives Exploitation Cell (CEXC)
 - 11th Mobile Unit (EOD)
 - C-IED Targeting Cell

- 203rd MI Bn (Weapons Intelligence Teams)
- J2 Fusion Cell

Contribute to the ongoing improvement of pre-deployment EHAT, through organizations such as MPRI, CFLCC and Continental United States training and mobilisation bases.

TRAINING MANDATE

C-IED is mandated by MNC-I OP

ORDER 06-01. The release of FRAGO 194 in 2006 directed TF TROY to establish 3 Satellite Training Teams which was to be located throughout the ITO.

IN A NUTSHELL

- The C-IED Team was formally known as the Explosive Hazards Awareness Team (EHAT) and is part of MNF-I / MNC-I.
- C-IED Training Team (TT) is

DIVERSE NAVY - IRAQ EXPLOSIVE HAZARDS AWARENESS PROGRAM



Bulldozer blast-damaged and used for training purposes (LCDR Bliss)

responsible for providing training to all CF personnel in the ITO, on how to deal with the hazards presented by IED's and UXO in Iraq.

- C-IED is under the operational control of TF Troy, the central organization responsible to the Commanding General to deal with the IED problem in Iraq.

- C-IED TT is headed up by an Australian (O4) presently LCDR Steve Bliss, RAN MCD Officer, FSGT Michael Avenell RAAF EOD, and senior NCO, and 17 US military personnel;

- C-IED TT conducts basic and Train The Trainer courses for counter IED Training Tactics and Procedures, (TTP's) throughout Iraq, at the various FOB's, and in Kuwait

- C-IED TT either convoys or flies to the training locations around the country

- C-IED TT has trained Australian, US, Italian, Slovakian, Dutch, and Korean military personnel.

Travel by road in Iraq is a very hazardous and the team is not immune to the IED threat or that of the T/FF. There is certainly a hint of adventure when we conduct what is known as a GAC (Ground Assault Convoy). The Team travels in two RG31s and one HMMWV which are all heavily

armoured with .50 Cal and 2 x 7.62mm machine guns

Australian C-IED TT members have been involved in this training since the inception in Late 2003.

From my perspective I am very focused on the task of delivering C-IED training and do my utmost to ensure that the training delivered will improve the awareness of the troops and in doing so help them stay alive. The training is very rewarding and it is extremely gratifying when you hear the students say 'this is the best military course I have ever attended' gives those personnel present a very tangible sense of achievement. 🇺🇸



Lieutenant-Commander Steve Bliss (above) joined the Navy as a 'boy sailor' in 1974. He has served in a number of clearance diver postings, and currently is deployed to Iraq.



'ON PATROL'

Inter-service Rivalry and United States Maritime Strategy during the Cold War

BY DESMOND WOODS

In the first five years after the dropping of atomic weapons on Japan no distinction was made in the Pentagon between nuclear and non-nuclear bombs. They were both seen as weapons of war and available for use as and when the executive saw fit. The concept of unilateral restraint, or 'limited war', was not attractive to the senior officers of the US Armed Forces who knew that it was only the A bombs which had made it possible to avoid the bloody invasion of the home islands of Japan. Douglas MacArthur was not alone in believing that it was irrational to own a weapon which was not available for use. Most senior naval officers did not doubt that war in future would be nuclear. The question was could the USN provide a more efficient nuclear delivery service than the Air Force? Without a nuclear strike capability it was widely believed merely tactical air power at sea would

be peripheral and irrelevant to future war. Consequently the retention of the USN's carriers was financially indefensible and strategically pointless. The USN in the late 1940's was a shrinking force, short of advocates, and vigorously opposed by the USAF, newly created, confident and very sure that it alone represented the future of aviation.

War with the Soviet Union was the only conflict imagined by the Pentagon and was foreseen, particularly by the USAF, as being a short nuclear spasm with no time for outdated concepts such as sea control. According to the proponents of massive retaliation only the Strategic Air Command, SAC, would be engaged in the next war. The USAF was not alone in wanting to know 'why do we need a Navy?'

The Cold War can be seen as a decades-long process of answering that question by demonstrating that sea power, and particularly air power



HMAS Sydney – the only Australian aircraft carrier to see service in the Korean war

at sea, confers advantages of mobility, proportionality and flexible response which are subtle, effective and meet the needs of a nuclear superpower which cannot use its ultimate weapon as a war fighting weapon, only as a deterrent.

Between 1945 and the 'Maritime Strategy' of the 1980's are four decades of bitter inter-service rivalry, doctrinal development and rapid technological advance which eventually placed the USN back in a position of unrivalled dominance of not only the world's oceans but also of the skies over every operational theatre. This paper attempts to outline some of the causes of the dispute and suggests that it was the move away from a belief in nuclear exchange as the most probable form of warfare that brought the Navy back to prominence and simultaneously exposed the illogicality of the USAF's claim that it could or should monopolise air power.

INTER-SERVICE RIVALRY

Before the Navy could begin the



Crewmen participate in a snowball fight, while clearing snow from USS Valley Forge's flight deck during operations off Korea, circa early 1951. Planes parked on deck are F4U-4 Corsair fighters. (Official US Navy photograph, now in the collections of the National Archives)

Inter-service Rivalry and United States Maritime Strategy during the Cold War

process of proving its long term viability and utility it had to defeat the USAF-inspired contention that whatever flew should belong to the Air Force.¹ This 'weapons based' approach was contrary to the Navy's long held functional approach which was that each service should first be assigned a function and then given the means to carry it out. The functional approach made the control of the US Marine Corps a Navy, not an army responsibility and justified the retention of purpose built naval strike aircraft flown and controlled by naval officers.² In 1948 Secretary of Defence Forrestal agreed to the Air Force's demand for predominance in strategic air warfare but reserved for the Navy an entitlement to control aircraft capable of both nuclear and conventional strike from the Mediterranean and the North Sea on Soviet naval bases particularly submarine pens on the Kola peninsular.

The size and weight of the first generation of A bombs had made their use by carrier aircraft impractical but technology was shrinking the weight of nuclear weapons and removing the Air Force's argument that it alone could deliver them. The Navy asked for and got from Forrestal permission to build the first super carrier, the *USS United States*. This ship would have provided a massive stable platform for carrier operations in the North Atlantic.

The following year, with her keel laid, the super carrier was cancelled, at the instigation of the USAF, by the new Secretary of Defence Louis Johnson who was a confirmed and biased opponent of the Navy. Even the former friend of Navy Representative Carl Vinson, Chairman of the Congressional hearings into Defence procurement, bought the argument that the only possible enemy was Russia and that therefore only SAC was relevant because only long range bombers could strike Soviet cities, the primary counter

value targets.³ Navy strikes on the Soviet littoral were deemed irrelevant to the outcome of the future war.

KOREAN WAR

It was the outbreak of the Korean War which rescued USN carrier aviation and made tangible the Navy's assertion that air power at sea at least complemented land based USAF power and under certain circumstances replaced it. Carriers off Korea demonstrated again that air power could be exercised without the need for vulnerable or unobtainable air bases ashore. It also became obvious during that first 'limited war' that carriers still served many military functions other than being strategic weapons platforms and remained the indispensable element in amphibious operations. Without the USN the successful Inchon landings in September 1950 would have been impossible as would have been the mass evacuation of 118,000 retreating troops from Hungnam two months later.

Suddenly it was the Air Force that was seen as being out of touch and ideologically driven in its determination that sea control was irrelevant to future

operations. Doubts arose as to the viability of using nuclear weapons as the Soviets acquired ICBMs. Containment was the new watchword of the United States and SAC had nothing to offer that policy.

Many battles lay ahead over the next 20 years with the Air Force and civilian administrators particularly over the Navy's control of Polaris but never again was the USN faced with the prospect of being deemed irrelevant or its right to exercise sea control and to strike by air from the sea seriously questioned.

Nuclear powered and armed super carriers were built and came into their own as the Kennedy administration replaced the doctrine of 'Massive Retaliation' with 'Flexible Response'. By 1961 Secretary of Defence Robert McNamara was in office and quickly grasped the fact that the Navy in general, and carriers in particular, had a major role in the main business of the Cold War which was power projection and presence wherever the Soviet Union sought to gain advantage or seek undue influence. Nineteenth century 'gunboat diplomacy' was replaced by

Grumman F9F-3 Panther of Fighter Squadron 52 taxis forward on *USS Valley Forge* to be catapulted for strikes on targets along the east coast of Korea, 19 July 1950. Note details of the ship's island, including scoreboard at left. (Official US Navy photograph, now in the collections of the National Archives)



twentieth century 'carrier diplomacy'.

During the Cuban Missile crisis Kennedy resisted the call from the USAF's General Curtis LeMay's for offensive air strikes on the missile sites on the island and opted for the defensive maritime strategy of blockade and naval interdiction. The USN's capacity for enforcing a maritime blockade through sea control and sea denial extricated the Kennedy administration from the missile crisis and definitely answered the question 'why do we need a Navy?' The answer was, and is, that only the Navy provides a nation with a capacity for every kind of operation from peace keeping to war making with every gradation between. No other service could, or can, offer that flexible capability.

THE END GAME

Despite the Soviet Union's strenuous efforts to become a 'blue water' surface navy to rival the USN it never succeeded and it was the capacity for

global intervention of the USN which ultimately restricted Soviet power to Eurasia. No President from Nixon to Reagan would have attempted the multifarious roles of United States foreign policy in the 1970's and 80's without the USN's capacity for interdiction and power projection. The response in the White House situation room to a crisis anywhere in the world during those decades was 'where is the nearest carrier battle group?'

By the time the Soviet Union fell apart in 1991 the USAF's opposition to the rebuilding of the USN's carrier force in the immediate post WW11 period was remembered, if at all, as being arcane, misguided and irrelevant to the way that the decades long Cold War's end game in fact played out. The carrier battle group became the principal means by which the Pentagon is able to secure the 'wet bits' of the world and minimise the capacity of those would use it as a free fire zone to do so. 

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(Footnotes)

¹ Baer George W. *The United States Navy, 1890 – 1990. One Hundred Years of Sea Power* Chap 12 pp 306-307

² The replacement of the RNAS in the 1920's by the RAF flying off RN carriers was deleterious to British naval aviation in the 1930's. The airmen were not sea minded and the seamen were not air minded.

³ Baer Ibid p 310

The modern carrier has come a long way in 50 years. Sailors prepare a catapult shuttle prior to the first day of carrier qualifications aboard the Nimitz-class aircraft carrier *USS Dwight D. Eisenhower*. (US Navy photo by Mass Communication Specialist 2nd Class Miguel Angel Contreras)



The Ran Bridging Train: Navy Reserves at Gallipoli

BY COMMANDER DAVID GOBLE, RANR

Ninety years ago Australia made its mark in the eyes of the world. The Australian and New Zealand Army Corps landed at Gallipoli and a legend was born. Every year, around the world, Australians celebrate the tragedy that was Gallipoli. What few know is that the Royal Australian Navy was also present in the form of the RAN Bridging Train. Little is recorded about the exploits of this team of Navy reservists and how they contributed to the support of military forces ashore and the withdrawal of those forces after they spent eight months at Suvla Bay, just north of what is now known as Anzac Cove. It is opportune to remedy this oversight and highlight the skill, dedication and ingenuity of this band of servicemen.

Formed on Federation when the Commonwealth assumed control of the colonial naval forces, the RAN Reserve paralleled the enlistment and maintenance practices of the Royal Navy Reserve. When hostilities began in 1914, the RAN Brigade, as it was then known, numbered over 1600, plus over 3000 under training. The role of the Brigade at that time was primarily to undertake inspection of ships and cargo; maintain port signal stations and lookouts; operate auxiliary craft for coastal patrol purposes; provide guards for ships and wharves; undertake some intelligence and censorship duties and later, perform minesweeping operations. It also provided, from within its own ranks, a contingent for service in German New Guinea; personnel for service with the AIF; gunlayers and signallers for duty in merchant ships; Officers and other ranks for service in seagoing Navy roles as well as other more routine war work. It is the Bridging Train, that was intended for service in Flanders, but

diverted to Gallipoli, however, that deserves special mention.

In early 1915, the Australian Government offered Great Britain a naval unit qualified in engineering and technical support to assist the Royal Naval Division in Flanders. The offer was:

one Bridging Train in accordance with Imperial War Establishments including personnel and their equipment, vehicles, and horses. Personnel will be Royal Australian Naval Reserve and trained in bridging.¹

The offer was accepted on 18 February and the unit formed under the Command of Lieutenant (later RADM) Bracegirdle. Training began in Melbourne; however, very few in the unit knew anything about bridging and the equipment required to conduct that training had to be built. In addition, most of the personnel recruited into the Train had to be taught how to ride and handle horses. It is apparent from the Unit's Nominal Roll that most members were city residents unlike many in the AIF who had horsemanship skills.

Given the urgency of war and before



their training was completed, the unit was embarked for transport to England on 4 June. The list of those embarked in the *Port Macquarie* records nine Officers and Warrant Officers (including a 'surgeon for vet duties') and 348 other ranks. In addition, 412 horses, 50 pontoon and trestle wagons and eight other vehicles were loaded. It was intended that training in pontoon construction would be provided on arrival in England.

By the end of June, at which time the Unit had been diverted to Bombay, 79 horses had died from infection or heat exhaustion. All horses were

A typical RAN Bridging Team soldier/sailor wearing Light Horse uniform with an anchor badge on his slouch hat. This is Able Seaman Driver Carl Barnaby Schuler, the son of a Swedish seaman. Born 1896 and died 1988. Served RANBT 1915-1917.

RAN Bridging Team



disembarked, thus saving them from the extremes of a voyage through the Red Sea. The Unit, now without its horses sailed for Port Said where it was diverted from its original destination and sent to the Dardanelles; the Admiralty having handed control of its operations to the British Army. It is ironic, perhaps, that this unit should suddenly find itself detached from the Navy and flung into pontoon construction; the one task in which its members had not yet been trained.

It is reported² in the *Official History of Australia in WWI* that after being attached to the British Ninth Army Corps on 25 July 1915, the Train commenced discharging equipment from the Port Macquarie in preparation for the Army Corps' landing at Suvla Bay on 7 August. From 27 July to 6 August, the Train's members unloaded their equipment and undertook five days' and nights' instruction in the management and use of pontoons after which they were 'flung into the muddle of the Suvla Bay attack'.³ Bean records that:

lifeboats engaged in taking off the wounded . . . could not get within 100 yards of the shore; could the Australians put up as soon as possible a pier from which embarkation could proceed? At once the necessary pontoons and superstructure were prepared and rowed two miles . . . under continual shrapnel fire; a pier 120 yards long was erected in twenty minutes from the time of arrival, and was in full use five minutes later.⁴

It is clear that their five days of training paid immediate dividends. The days that followed saw the Train continue with pier construction.

During the initial stages of the landing it is reported that the supply of water to the landed troops was managed badly so on 12 August, the Bridging Train was given the task of supplying all water from the ships to

shore, for the construction of storage tanks and for the distribution of the water supplies. This was in addition to their normal construction duties.

Towards the end of August, the Train was also tasked 'to carry out any work afloat . . . that the Navy might require.' A report from Bracegirdle is quoted to highlight the range of duties that the Train was tasked to perform:

The principal duties allotted to the unit by the Royal Navy were . . . water supply, care of landing piers, discharging of stores . . . lighterage of same to shore, salving of lighters and steamboats wrecked . . . disembarking troops with their baggage . . . and of all munitions and stores . . . The duties allotted by the IX Army Corps were . . . control and issue of all engineer and trench stores and materials, care and issue of all trench bombs and demolition stores, . . . erection of high explosive magazines, dugouts, cookhouses and galleys, assembly of hospital huttings, . . . and the manning and control of the steamtug *Daphne*.⁵

Bean, the AIF's Official War Correspondent at the time, later noted that, although the mortality rate amongst members of the Train was low, with casualties amounting to a little over 10 percent, the unit was powerless to retaliate against any Turkish attack.¹ The tasks assigned to the Train did not involve any active combat; rather it remained a target to be shot at and bombed by aircraft and artillery shells. It was reported that when British soldiers were borrowed to assist with the landing of reinforcements, they 'openly looked forward to trenchlife and its comparative shelter again as a rest from the heavy work under shellfire on the beach'.⁶

In December came the evacuation of troops from the Peninsula. At this time, the weather was bleak with driving rain and snow the norm.



RAN Bridging Team personnel training



Bridging Train at El Arish in 1916 building a wharf to support the advancing ANZAC Mounted Division in its push into Palestine. The unit landed on a mined beach to build wharves to provide logistics support to advancing forces. The RANBT came under Turkish shell fire and air attack.



Above & below: Part of the Bridging Train Camp at Suvla Bay 1915, behind the front line where they supplied engineering and wharf support.



The RAN Bridging Train: Navy Reserves at Gallipoli

Soldiers suffering from exposure were accommodated in dugouts lined with bunks that had been erected by the Train's carpenters. At the same time, the Train was busy erecting new piers and making embarking stages from which to evacuate the Army. This necessitated the construction of a long and heavy pier. Bracegirdle's own report typifies the ingenuity displayed by the Train's members in their efforts to procure material for its construction. Although timber was relatively easy to obtain, not so were the large bolts and iron dowels needed to hold it together. The unit, therefore, stripped a wrecked sanddredge of its metal railings and ladders and crafted, within a few days, the necessary equipment on the beach using portable forges, stocks and dies.⁷

The rest is now history. The evacuation of allied troops from Gallipoli was an outstanding success. With the troops embarked, members of the Train destroyed their equipment ashore and left the beach at 1930. By 0200 on 18 December the Train departed Suvla Bay, thus the men of the RAN Bridging Team were the last to leave.⁸

Although their involvement in the Dardanelles campaign was over, the Train moved on to see service in Egypt and elsewhere, where it operated with distinction. In early 1917 the decision was made to incorporate the unit into the AIF. Following a series of misunderstandings about the usefulness of the Train, it was disbanded. About 50 members joined the AIF and the remainder were transported back to Australia, arriving in Melbourne in July 1917. The RAN Bridging Train thus simply disappeared.

It is noteworthy that, although only a few miles separated the Bridging Train from the AIF in Gallipoli, very few Australian soldiers were aware of the Train's existence. Indeed, even

those at Suvla Bay did not recognise the Train for what it was. One British Army Officer's diary recorded it as a 'party of regular Australian [army] engineers'. It was certainly neither regular nor Army. Bean noted that: *they are part of a world so separate that I do not think one Australian or New Zealander in a thousand knows that they are there.*⁹

Even today, 90 years after its extraordinary effort at Gallipoli, the exploits of the RAN Bridging Train remain little recognised. It is hoped that this short summary of what the Train achieved in such harsh conditions and with so little training will serve as a reminder to us all of the value and traditions of Reserve service. It is fitting that this paper should end with an excerpt from Bean who reported:

There they are today, in charge of the landing of a great part of the stores of a British Army. They are quite cut off from their own force; they scarcely come into the category of the Australian Force, and scarcely into that of the British; they are scarcely army and scarcely navy. Who is it that looks after their special interests, and which is the authority that has the power of recognising any good work that they have done, I do not know. If you want to see the work, you have only to go to Kangaroo Beach, Suvla Bay, and look about you. They have made a harbour.¹⁰

Note: The preceding account is based on information held in the Australian War Memorial. For a full account of the RAN Bridging Train's activities refer to Charles Bean, 1941, *Official History of Australia in the War of 1914-1918*, Angus & Robertson, Sydney. An electronic version

of the publication is available from the Australian War Memorial at <<http://www.awm.gov.au/histories/index.asp>>

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(Footnotes)

¹ In appendix 19 to Volume IX of his *Official History*, Bean recounted the story of two Bridging Train members who 'borrowed' rifles and commenced sniping at five Turkish soldiers, killing four, in order to save a British 32nd Field Ambulance soldier wounded and trapped by rifle fire. Bean reported that they did not want their actions to be mentioned because they were 'out of bounds without leave' and would be charged if it became known that they had ventured into the area and that they normally didn't carry rifles.

(Endnotes)

¹ Commonwealth Government cable 12 February 1915, cited in Bean, C. 1941. *Official History of Australia in the War of 1914-1918*, Vol IX—The Royal Australian Navy: 1914-1918 (9th ed.). Angus & Robertson, Sydney, p 389.

² Bean, C. *Official History of Australia in the War of 1914-1918*, Vol IX—The Royal Australian Navy: 1914-1918 (9th ed.). Angus & Robertson, Sydney.

³ *Ibid*, p 392.

⁴ *Ibid*, p 393.

⁵ Bracegirdle, L.S. cited in Bean, C. *op cit*, p 395.

⁶ Bean, C. *op cit*, p 396.

⁷ *Ibid*, p 574.

⁸ For a more detailed account of the RAN's involvement in the Gallipoli campaign, including submarine AE2's penetration of the Dardanelles on 25 April 1915 and the RANBT, see Frame T.R. and Swinden, G.J. 1990, *First In, Last Out*. Kangaroo Press, Kenthurst, NSW.

⁹ Bean, C. *op cit*, p 404.

¹⁰ *Ibid*, p 396.



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Bridging Train Camp at Ismalia

(All photos courtesy of Greg Swinden, author, and Naval Officer. Greg is the co-author — with Tom Frame — of *First In, Last Out*, a detailed account of the RAN's involvement in the Gallipoli campaign)

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People Smuggling: Defending Australia's National Interest

BY LCDR N.P. TATE, RAN

I looked down through the open shuttle ramps, saw those people, and felt I was back in history, on a prison ship. It is wrong!

LCDR D. Murphy, RANR¹

The issue of people smuggling was a major election issue for the 2001 federal election. One contention was the apparent politicising of the ADF, and in particular naval personnel and their actions in supporting the Governments people smuggling initiatives. The mix of domestic disquiet during the election, a feeling of being politicised by the Government,² and international condemnation, created moral questions in the minds of some ADF personnel, thereby reducing their effectiveness.³ As an example, late in 2001 *HMAS Tobruk* performed two bulk transport tasks of suspected unlawful non-citizens⁴ (SUNC) from Ashmore Reef: one to Nauru and the other to Christmas Island. During the first task, Lieutenant Commander Murphy expressed his concerns on the morality of the Australian Government's actions in using *Tobruk* that way. His concerns affected his ability to undertake his duties and he subsequently left the ship before the second.

The catalyst to the election disquiet was the *MV Tampa* incident of late August 2001.⁵ However, prior to this event, the Australian Government had already spent considerable time developing new domestic legislation as people smuggling had increased significantly and had become an important issue. When



HMAS Tobruk
(Courtesy Dept. of Defence)

the *Tampa* incident occurred, the Government found the new legislation was inadequate for their aims and so created additional powers to their enforcement actions, all in the heat of the public and international denunciation.

The purpose of this essay is to identify whether the United Nations Convention on the Law of the Sea, 1982⁶ (UNCLOS) and the Convention Relating to the Status of Refugees, 1951⁷ (Refugee Convention) are impediments⁸ to current efforts by Australia to address the problem of

people smuggling into Australia. This will be achieved by firstly providing context by reviewing the more recent history of people smuggling to Australia including domestic legislation, border control operations, and the domestic and international condemnation of Australia's actions.

Once these issues are in context, the more visible concerns of the international community will be reviewed to show how they relate to either UNCLOS or the Refugee Convention. This will allow commentary on how the Australian Governments compliance, or otherwise, has driven public opinion

and subsequently impacted on ADF personnel involved in the operations against people smuggling.

PEOPLE SMUGGLING AND AUSTRALIA

Before reviewing Australia's international obligations, it is useful to provide a brief description of the history of people smuggling in Australia, the domestic legislation changes that have been made, and the operations conducted in support of enforcing that legislation.

A review of government records indicates the increase of people smuggling by boat in recent years.

The following table identifies the increasing numbers of unauthorised boat arrivals from 1988 – 2003. Since the successful intervention of Operation Relex, the multi-departmental response to people smuggling, with one exception⁹, there have been no known unauthorised boat arrivals since 16 December 2001.

Financial Year	Boats	Boat Arrivals
1988-89	2	
1989-90	3	243
1990-91	5	172
1991-92	3	81
1992-93	4	198
1993-94	6	200
1994-95	21	1089
1995-96	14	591
1996-97	12	365
1997-98	17	190
1998-99	42	923
1999-00	76	4189
2000-01	53	4118
2001-02	18	3265
2002-03	0	0
2003-04	1	54
TOTAL	277	15678

Figure 1. Interception of Illegal Immigrants¹⁰

There were two undetected landings of illegal entrants on the eastern coast of Australia in 1999.¹¹ Consequently, the Prime Minister established a Coastal Surveillance Task force to review the situation.¹² The task force recommended that 'comprehensive legislative amendments be introduced to further strengthen maritime investigatory and enforcement powers against both Australian and foreign flag vessels.'¹³ Whilst the task force recommended only legislative changes, the Government approach to the problem of people smuggling remains two-pronged with both legislative and

enforcement operations to back up the legislation.

The pertinent Australian domestic legislation when dealing with the issues of people smuggling are the Customs Act 1901 and the Migration Act 1958. The main changes to this legislation occurred in 1999 because of the report from the Prime Minister's Coastal Surveillance Task Force. The Border Protection Legislation Amendment Act 1999 gave the ADF a greater range of new powers without the requirement to obtain a warrant. The legislation attempted to enshrine in Australian domestic law some of the principles from UNCLOS such as hot pursuit, the contiguous zone, and powers over ships without nationality on the high seas.¹⁴

The Tampa incident highlighted some operational and policy problems with the legislation¹⁵ so the Government pushed additional legislation through Parliament. The resulting Border Protection (Validation and Enforcement) Act 2001 (BPVE) and Migration (Excision from Migration Zone) Act 2001 adjusted the Migration and Customs Acts and again increased the ADF powers substantially.¹⁶ In particular, for ships or aircraft boarded for a suspected breach of either the Customs Act or the Migration Act, the legislation empowers all ADF personnel as officers under the relevant act.¹⁷ The authorisation is generally limited to the purposes of boarding, search, seizure, confirm identity and arrest without warrant,¹⁸ and detention of SUNC.¹⁹ However, ADF personnel are not authorised to receive an application for a protection visa, which remains in the domain of immigration officials.²⁰ Implementation of the legislation is supported by border protection operations.

Coastwatch, a division of Customs, has coordinated border protection

The mix of domestic disquiet during the election, a feeling of being politicised by the Government,² and international condemnation, created moral questions in the minds of some ADF personnel, thereby reducing their effectiveness.³

operations since its formation in 1988. The RAN has supported these operations since the late 1960's.²¹ From 2001, with the increased number of unauthorised boat arrivals, the Government decided to boost its border protection operations.

Operation RELEX's aim was 'to prevent, in the first instance, the incursion of unauthorised vessels into Australian waters such that, ultimately, people smugglers and asylum seekers would be deterred from attempting to use Australia as a destination.'²² The lead Government agency for RELEX is the ADF in lieu of Coastwatch. It consisted of the use of RAN major fleet units in addition to the usual patrol boats and customs/Coastwatch regime. The initial instructions to those involved in RELEX were to intercept, board and hold unauthorised arrivals for shipment in sea transport, to a country to be designated. This policy was adjusted to, where possible, intercept, board and return the Suspected Illegal Entry Vessel's (SIEVs) to Indonesia.²³ This policy was, however, problematic as the SIEV crew or SUNC started to place themselves in danger by attempting to set fire to, or sink their vessels. Their apparent objective was to ensure the ADF were obligated to save them under the Safety of Life at Sea provisions. Once the SUNC were picked up they were either taken directly to Christmas Island, or consolidated into HMAS Tobruk and moved to Nauru or Christmas Island by sea. A small number were also taken to Papua New Guinea.

Many commentators have professed their views on the people smuggling issue and Australia's attempts to address this problem.²⁴ A number list article after article of international conventions and then sum up by stating that the Australian Government actions do not meet these requirements. They appear to take a

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moralistic or emotional view and it is difficult to identify cogent arguments. Having identified the Australian domestic legislation and operational events that currently affect the issue of people smuggling, this essay will identify where Australia is accused of being in breach of the two main conventions.

LAW OF THE SEA CONVENTION 1982

The standing orders of Operation RELEX require Australian Government ships or aircraft to identify SIEVs and attempt to get them to turn away from Australia.²⁵ Notwithstanding any issues that may arise from Australia's obligations under the Refugee Convention,²⁶ this policy has been criticised as being contrary to some sections of UNCLOS. In particular the right of innocent passage by vessels through territorial seas, the responsibilities under SOLAS to provide assistance to unseaworthy vessels, and the policy of towing non compliant vessels back to within sight of Indonesia.

Australia is a party to UNCLOS and has claimed internal waters,²⁷ a territorial sea,²⁸ contiguous zone²⁹ and exclusive economic zone (EEZ).³⁰ It is not the purpose of this essay to define all of the issues with respect to each zone. However, simplistically, Australia is entitled to both legislate over, and enforce jurisdiction, for most domestic law to the territorial sea.³¹ One major exception applies to ships conducting 'innocent passage'³² through the territorial sea. Jurisdiction diminishes as vessels get further away from land. In the contiguous zone, Australia is only entitled to enforce its domestic law with respect either preventing or punishing infringements of its customs, fiscal, immigration or sanitary laws and

regulations.³³ Sovereign rights over the EEZ do not include any relevant rights within the purview of this essay.

During the Tampa incident, much was stated in the media about the right of innocent passage. There are small pockets of complaint that the ADF were boarding SIEVs despite their rights. Ships of all states have the right of 'innocent passage' through the territorial sea of a coastal state.³⁴ However, this passage must also not be prejudicial to the 'peace, good order or security' of the coastal state. Normally, infringing immigration laws is regarded under the treaty as prejudicial and is so prohibited.³⁵ The ADF only board a vessel, either in the contiguous zone or territorial sea. In these areas, Australian legislation provides the right to board vessels where an officer believes there may be a breach of the Migration Act³⁶ and therefore, the actions of the ADF are consistent with UNCLOS. Subsequently, ADF personnel appear to have no difficulty in performing this aspect of their duties.

Some commentators are concerned that Australia is irresponsible in dealing with SIEVs that are overloaded, lack safety equipment, or are generally unseaworthy when turned back. Amnesty International quoted naval officers' assessments that some of the asylum seekers' boats were only marginally seaworthy.³⁷ They claimed that the ADF's actions were not in keeping with their responsibilities for the protection and preservation of safety of life at sea. However, the ADF's commitment to meeting safety of life at sea requirements was acknowledged during the recent Senate Select Committee on a Certain Maritime Incident.³⁸ On balance, these claims appear to be inconsistent with the ADF's professional approach to safety. Although unsettling to some personnel, the claims do not appear to have had a great impact in the performance of



Coastwatch helicopter

The standing orders of Operation RELEX require Australian Government ships or aircraft to identify SIEVs and attempt to get them to turn away from Australia.²⁵

their duties.

Another issue scorned by international commentators is the 'tow-back' policy.³⁹ The Government directed the

Navy to escort or tow-back SIEVs from the Australian contiguous zone to the edge of Indonesian waters.⁴⁰ The 'safety of life at sea' issues have already been discussed. However, whether the policy is in accord with UNCLOS is debatable. On the one hand, by towing the vessels through the high seas, the tow-back policy could be viewed as contrary to freedom of navigation on the high seas.⁴¹ However, in Australia's favour is the apparent acquiescence by Indonesia over the practice. Indonesia as the Flag State of all vessels that have been towed so far has not complained. In addition, the policy is in accord with other States practice, such as Malaysia, Italy and the United States. For example, since at least 1979, Malaysia has had a policy of tow-out of potential refugee boats.⁴² As such, this practice could be viewed as customary law, as it has both elements of history and acceptance by other states. Therefore, it appears that this policy is not impeded by UNCLOS. Furthermore, the safe conduct of the evolution by the Navy is well established, and so the detrimental coverage is unlikely to have affected ADF personnel in the conduct of their responsibilities.

From this brief overview, Australia appears to be meeting its obligations under UNCLOS. The impact of detractors using UNCLOS as the basis for their complaints does not appear to have created great angst with ADF personnel. Therefore, UNCLOS is not considered as either a legal or a moral impediment to the current efforts by Australia to address the problem of

people smuggling into Australia.

REFUGEE CONVENTION 1951

The Migration Act provides the Australian domestic legislative framework incorporating its obligations as a party⁴³ to the Refugee Convention. The original Migration Act recognised Australia's obligations to refugees⁴⁴ in accordance with the Refugee Convention, in particular the articles on non-discrimination of applicants,⁴⁵ claimant's access to courts,⁴⁶ and the prohibition of expulsion or return ('Refoulement') of refugees.⁴⁷

International and domestic commentators have decried the Australian Governments changes to the domestic legislation particularly those changes made after the

Tampa incident.⁴⁸ Of this general denouncement, there are three issues concerning the Refugee Convention that relate to this essay. These issues include the Australian Governments excision of Australian territory, which effectively abrogates its responsibility for applying treaties to all of its territory.⁴⁹ Australia has also been accused of refusing access to the courts system for those denied a protection visa⁵⁰; denying refugee status to applicants who have transited through third states, and being effectively guilty of the refoulement of refugees.⁵¹

Australia has been accused of abrogating its responsibility under the Refugee Convention by its use of the Migration (Excision from Migration Zone) Act 2001 to amend the Migration Act to limit its obligations⁵² as it excludes portions of sovereign territory for the purposes of claiming

Australia has been accused of abrogating its responsibility under the Refugee Convention by its use of the Migration (Excision from Migration Zone) Act 2001 to amend the Migration Act to limit its obligations⁵²

asylum. In defence of its policy, the Australian Government has stated that the Refugee Convention still applies in excised areas. The only difference is that non-citizens applying for recognition as a refugee in these areas will not be able to apply for Australian visa's. However, they are still guaranteed access to an asylum determination processes to ensure that any protection needs are identified and addressed.⁵³

Australia is a party to the Vienna Convention on Treaties (Vienna Convention),⁵⁴ ipso facto it has agreed to apply treaties to all of their territory unless a different intention is in that treaty. Since the Refugee Convention applies to all of a contracting state's territory⁵⁵ and UNCLOS includes a state's territorial sea as part of its territory⁵⁶ the Refugee Convention should apply to the Territorial Sea

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claimed by Australia. Furthermore, in all other respects, Australia applies its domestic legislation to its full sovereign territory, which is taken to include the territorial sea.⁵⁷ Notwithstanding whether the revised Migration Act does breach this requirement, the real issue is perception. It is that perception that has provided an opportunity for opponents to attack Australia's integrity.

With respect to the Australian Government's defence, the Vienna Convention limits signatories with a prohibition on using internal or domestic laws to justify a breach of a treaty.⁵⁸ Whilst the Government maintains it is still meeting its obligations under the Refugee Convention, the different treatment of asylum seekers due to their method of attempted entry is viewed as contrary to article 31.⁵⁹ Therefore, reliance on domestic law is not a defence and the Migration Act, whilst correct in the domestic environment,⁶⁰ appears to violate international law. In this case, there is a perception that Australia is not acting in good faith. The resulting international clamour is providing more ammunition for the doubt of some ADF personnel.

The Australian Government has been accused by the Refugee Council of Australia⁶¹ that their removal of access to the courts for an applicant to dispute denial of a protection visa is contrary to the Refugee Convention.⁶² Others state that it is unfair and inaccurate to conclude that all unsuccessful applicants are non-genuine refugees who are seeking to abuse the refugee determination process as there are many reasons why people are unsuccessful in their refugee claims.⁶³ For example, some applicants could be disadvantaged by the lack of access to legal advice and representation. This is exacerbated by poor English language skills and cultural barriers to accessing

community services.⁶⁴ The 'Pacific Solution' where some SUNC are taken to a third country or an 'excised' part of Australian territory, is also condemned as it further reduces the ability of asylum seekers to access appropriate legal support.

Whilst not supporting the 'Pacific solution', Amnesty International has accepted that Australia has retained responsibility for the SUNC as a part of its arrangements. Therefore, the only real issue is access to the courts (ensuring due process and the process of appeal).

The Migration Act includes a process for deciding whether a person is recognised as a refugee by Australia. The act provides for the issue of a protection visa and describes the process of claiming refugee status by an asylum seeker to be that of applying for a protection visa. Where a protection visa is refused or cancelled,⁶⁵ a non-citizen is usually able to apply to the Refugee Review Tribunal⁶⁶ for arbitration. The Minister for Immigration is also available to review individual circumstances providing a third layer to the review process. The removal of the courts from adding another layer of review appears reasonable to the author.

Notwithstanding arguments about location of processing, it is widely accepted that the state is the sole arbiter of refugee status.⁶⁷ Therefore, as long as the process is correct in domestic legislation, and in this case, the Federal Court of Australia has upheld the process,⁶⁸ then international concerns are not relevant. However, if these types of issues are not managed properly by ensuring proper consultation and information to the public, they become a distraction to the Government and create doubt in the minds of those enforcing the policy.

Amnesty International has also raised serious concerns over Australia's

policy of denying refugee status to applicants who have transited through third states, effectively being accused of the refoulement of refugees.⁶⁹ There are essentially two issues included in this charge. The first is that the Government has breached Article 31 of the Refugee Convention⁷⁰ by treating them differently due to their method of arrival. The second is an accusation of refoulement.

Article 31 provides that refugees should not be subject to penalty for their illegal entry or presence when coming directly from a territory where their life or freedom was threatened. This article relies on the asylum seekers coming directly from harms way. The Australian Government contends that some have suspended their journey in a safe country and therefore, are not subject to the protection of this article. With respect to whether the asylum seekers should be treated differently if they have transited through a third State, there were differences in opinion during the framing of the convention. The final wording appears to support the Australian Governments argument. It sought to 'protect States against refugees entering illegally from intermediate countries unless they were again facing persecution.'⁷¹ DIMIA⁷² argues; supported by the Federal Court of Australia, that international protection is protection of last resort, therefore a refugee should seek protection in a third country particularly if that is the transit point before arrival in Australia.⁷³ This stance appears to be supported by the Executive Committee of the UN High Commissioner for Refugees (ExCom) who have indicated general agreement to the concept that a refugee should place their claim at the first 'safe' country.⁷⁴ In effect, this indicates that the Australian Governments policy appears not to breach international requirements.

Whilst the Government maintains it is still meeting its obligations under the Refugee Convention, the different treatment of asylum seekers due to their method of attempted entry is viewed as contrary to article 31.⁵⁹

Notwithstanding this defence, commentators have condemned Australia for redirecting unauthorised arrivals back towards Indonesia, as many observers do not believe it is an appropriate destination.⁷⁵ The international arbiter, ExCom, is silent on whose responsibility it is to ensure the safety of a country.⁷⁶ The SUNC transported in Tobruk's first load had spent some time in Indonesia before attempting to gain access to Australia, all in excess of seven days.⁷⁷ By remaining in a third country for more than seven days, Australia believes that these asylum seekers had suspended their journey.

Amnesty International⁷⁸ claim that international refugee law does not require a refugee to seek asylum in the first country whose territory he or she reaches.⁷⁹ They also argue that a state may be guilty of refoulement where it does not ensure a third country is safe for a refugee to remain.⁸⁰ Furthermore, a state is obligated to consider someone's asylum application substantively unless that responsibility is assumed by a safe third country. That requested state must establish that the third country is both safe and explicitly guarantees that it will take on the responsibility required before release.⁸¹

Amnesty International is essentially arguing against the Australian policy commonly known as the Pacific Solution⁸² where potential refugees are turned away from Australia to nations that are not bound by the Refugee Convention. Whilst the Refugee Convention is silent on this issue, DIMIA argues that Australia can choose to remove applicants for refugee status to a third country. In common law this is acceptable in circumstances where Article 33 of the Convention will not be breached.⁸³ The Federal Court supported the policy expanding it to accept that the third country does not have to be a

signatory to the Refugee Convention.⁸⁴ This concept is yet to be tested in the international court system. Again, whilst the actions of the Australian Government appear to be in accord with International law, their lack of strong argument against detractors has indicated some level of duplicity, again creating doubt in the mind of the enforcer.

Of the major arguments proposed by contemporary commentators, three areas of the Australian Governments approach have engendered international condemnation subsequently impacting on ADF personnel. Firstly, the reduction in application of the Refugee Convention to Australian sovereign territory, the limitation of access to the courts for those determined not to be refugees, and the perception of refoulement. All of these issues could be considered impediments to the current efforts by Australia to address the problem of people smuggling into Australia as they have directly impacted on the operational efficiency of some ADF personnel in undertaking their duties.

In conclusion, the issue of asylum seekers has proven to be an emotive subject and the members of the ADF were not immune to the debate that occurred during the 2001 federal election. Although domestic political parties, non-government organisations and foreign governments, have claimed that the Australian Government is not acting in good faith in its handling of the people smuggling issue,⁸⁵ the issues raised in this essay all indicate that Australia is meeting its obligations. Australia is a party to the Vienna Convention on the law of Treaties, and so must comply with these treaties⁸⁶ 'in good faith'⁸⁷ and there is nothing to indicate that this is not the case.

The thesis of this essay was that both domestic and international condemnation and disdain, has

created angst for those involved in the enforcement operations. By failing to adequately argue or justify the Government's position to the wider community and display good faith, some of these issues have disturbed service personnel and impeded their implementation of Government policy. Notwithstanding this break down in communication, the role of the ADF is to uphold the democratically elected government's policies. Therefore, whether we agree or not, our responsibility is to undertake our duties in a professional manner. It is unfortunate that some people decided that they were unable to do this. 

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(Endnotes)

¹ Officer of the watch *HMAS Tobruk*, October 2001.

² O'Connor, M., *Is the ADF being politicised?*, in *Defender Magazine*, National Magazine of the Australia Defence Association, Vol XIX No 1, Autumn 2002, p 5.

³ Drawn from personal experiences of author as Supply Officer *HMAS Tobruk* during Operation RELEX.

⁴ *Migration Act* s.14: 'Unlawful non-citizens (1) A non-citizen in the migration zone who is not a lawful non-citizen is an unlawful non-citizen.' Suspected Unlawful Non-Citizen (SUNC) is the term used by the ADF to identify a person they reasonably suspect is an unlawful non-citizen.

⁵ On 26 August 2001, Coastwatch detected a wooden fishing boat in the vicinity of Christmas Island. The boat broke down and was subsequently assisted by the *MV Tampa*. The *Tampa* took onboard 438 unauthorised arrivals but was prevented from landing the passengers at Christmas Island by the Governments use of the ADF. Source:

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Hancock, N., *Border Protection Bill 2001*, Bills Digest No.41 2001-02, Department of the Parliamentary Library.

⁶ UNCLOS came into effect 16 November 1994.

⁷ The *Refugee Convention* came into effect in 1954.

⁸ Impediment: 'obstruction or hindrance; obstacle', defined in Macquarie University, 1982, *The Macquarie Concise Dictionary*, Macquarie, Sydney, Australia, p. 480.

⁹ A vessel arrived of Port Hedland 1 July 2003 with 54 passengers, including 28 adult men, 17 adult women and 9 children believed to be from Vietnam. The vessel does not conform to the Operation RELEX profile.

¹⁰ Source – Department of Prime Minister and Cabinet, *Report of the Prime Minister's Coastal Surveillance Task Force*, Canberra, 1999, Appendix B-1. Australian Customs Service, *Annual Report 1999-2000*, Figure 21. in Forbes, A., 2001, Protecting the National Interest: Naval Constabulary Operations in Australia's Exclusive Zone, p. 57 and OP RELEX matrix from Select Committee on a Certain Maritime Incident.

¹¹ Kennedy, L., 'Call to stop the people smugglers', *Sydney Morning Herald*, 12 April 1999, p. 36.

¹² Hancock, N., *Border Protection Bill 2001*, Bills Digest No.41 2001-02, Department of the Parliamentary Library, p. 1. The task force was lead by Mr Max Moore-Wilton, Secretary of the Department of Prime Minister and Cabinet, with the Chief of the Defence Force, and Secretaries of the Departments of Defence and Immigration and Multicultural Affairs, Chief Executive Officer Australian Customs, and Director General Office of National Assessments.

¹³ Prime Minister's Coastal Surveillance Task Force, *Report of the Prime Minister's Coastal Surveillance Task Force*, June 1999, Recommendation 17.

¹⁴ Gately, W., and Moore, C., 2002, *Protecting Australia's Maritime Borders: The Operational Aspects*, in Tsamenyi, M., and Rahman, C., eds., *Protecting Australia's Maritime Borders: The MV Tampa and Beyond*, Wollongong Papers on Maritime Policy No. 13, Centre for Maritime Policy, University of Wollongong, Wollongong, 2002, pp. 37-57.

¹⁵ The legislation was written with an intercept, arrest and detain focus, whereas the policy changed to an intercept, repel or return focus.

¹⁶ Gately, W., and Moore, C., loc. cit.

¹⁷ *Border Protection (Validation and Enforcement) Act, Customs Act, and Migration Act*

¹⁸ *Migration Act* s.245F, *Customs Act* s.185

¹⁹ *Migration Act* s.189

²⁰ *Migration Act* s.45: The visa granted to persons accepted to be a refugee.

²¹ The RAN provides a historical minimum of 1800 patrol boat days per year in support of this governmental approach to border protection. Source: Defence Annual Reports 1997 – 2001.

²² Select Committee on a Certain Maritime Incident report, Chapter 2, *Operation Relex*, at <www.aph.gov.au/senate/committee/maritime_incident_ctte>, p. 13.

²³ *ibid.*, p. 27.

²⁴ Examples can be seen at <<http://www.law.unimelb.edu.au/icil/tampa/bpts.html>>

²⁵ A repel or return policy.

²⁶ Potential inconsistencies with the Refugee Convention will be addressed later in this essay.

²⁷ UNCLOS, Art. 8: Internal Waters. '... waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.'

²⁸ UNCLOS, Art. 2: Territorial Sea. 'The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea. UNCLOS, Art. 3: Breadth of the territorial sea. Australia claims 12nm from a baseline set in accordance with Articles 5 – 16.

²⁹ UNCLOS, Art. 33: Contiguous Zone. Contiguous to the territorial sea, claimed by Australia out to 24nm from baseline.

³⁰ UNCLOS, Art. 55-75: Exclusive Economic Zone. Australia claims an EEZ from 12nm from baseline to 200nm from the baseline.

³¹ However, sovereignty over the territorial sea is not total. It is exercised subject to UNCLOS and to other rules of international law.

³² UNCLOS, Art. 17: '... ships of all States ... enjoy innocent passage through the territorial sea.'

³³ UNCLOS, Art. 33(1): 'In ... the contiguous zone, the coastal State may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.'

³⁴ UNCLOS, Art. 19(1): Passage is defined as '... innocent so long as it is not prejudicial to the peace, good order or security of the coastal State.'

³⁵ UNCLOS, Art. 19(2): 'Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in ... (g) '... the loading or unloading of any ... person contrary to the customs, ... immigration ... laws and regulations of the coastal State.'

³⁶ The *Migration Act* is the domestic immigration law of Australia.

³⁷ Amnesty International, Australia-Pacific,

Offending human dignity – the 'Pacific Solution', 26 August 2002, (AI Index: ASA 12/009/2002), p. 6.

³⁸ Select Committee on a Certain Maritime Incident report, op. cit., p. 15.

³⁹ *ibid.*, p. 18. Various articles and anecdotes on being forced back towards Indonesia by asylum seekers are at <<http://www.sievex.com>>

⁴⁰ Select Committee on a Certain Maritime Incident report, op. cit., p. 18. A Government Directive dated 12 October 2001.

⁴¹ UNCLOS, Art. 87: Freedom of the high seas.

⁴² MacFarquhar, E., *The survivors who seek their place in paradise*, in *The Economist*, 21 July 1979, p. 19.

⁴³ The *Refugee Convention* refers to a party as a 'contracting state.'

⁴⁴ *Refugee Convention*, Art. 1: The term 'refugee' shall apply to any person who: 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.'

⁴⁵ *Refugee Convention*, Art. 3: 'The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.'

⁴⁶ *Refugee Convention*, Art. 16 (1): 'A refugee shall have free access to the courts of law on the territory of all Contracting States.'

⁴⁷ *Refugee Convention*, Art. 33 (1): 'No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

⁴⁸ Examples can be seen at <<http://www.law.unimelb.edu.au/icil/tampa/bpts.html>> or <http://journalism.uts.edu.au/subjects/oj1/oj1_a2001/refugee/shame/html>

⁴⁹ Triggs, G., *International Law Aspects of the Tampa Affair: A Legal Twilight Zone*, <<http://www.law.unimelb.edu.au/icil/tampa/gilliantriggs.html>> accessed 16 October 2003.

⁵⁰ Refugee Council of Australia (RCOA) comments on Migration Legislation Amendment (Judicial Review) Bill 1998. <<http://www.refugeecouncil.org.au/html/resources/submibi.html>>

⁵¹ Thorn, G., 2001, *MV Tampa and the 1951 Refugee Convention: its Impact and Implications*, at <<http://www.law.unimelb.edu.au>>